TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~528~~ 129

THE UNITED STATES, PLAINTIFFS IN ERROR,

vs.

THREE HUNDRED AND FIFTY-SIX CADDIES OF TOBACCO, ETC.—J. N. HENDERSON & CO., CLAIMANTS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

FILED DECEMBER 6, 1869.

SUPREME COURT OF THE UNITED STATES.

No. 328.

THE UNITED STATES, PLAINTIFFS IN ERROR,

vs.

THREE HUNDRED AND FIFTY-SIX CADDIES OF TOBACCO, ETC.—J. N. HENDERSON & CO., CLAIMANTS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

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1 Pleas in the circuit court of the United States of America for the district of Iowa, held at the United States court-room, in the city of Des Moines, in the district aforesaid, before the Hon. J. M. Love, district judge of said district, and, in the absence pro tempore of the Hon. Samuel F. Miller, one of the justices of the Supreme Court of the United States, sole judge of said circuit court, on Thursday, October 22d, 1869, at the regular October term of said court.

GEORGE B. CORKHILL, *Clerk.*

THE UNITED STATES
vs.
556 CADDIES OF TOBACCO ET AL. & J. N. HENDERSON & COMPANY.

DISTRICT OF IOWA, *ss:*

Be it remembered that, on the twenty-seventh day of September, in the year of our Lord one thousand eight hundred & sixty-nine, came the United States, by W. F. Sapp, her attorney, and filed in the office of the clerk of the circuit court of the United States for the district of Iowa, at Des Moines, in said district, his bill of information against 556 Caddies of Tobacco et al. & J. W. Henderson & Co.; which said bill of information is in the words & figures following, to wit:

2 In the circuit court of the United States for the district of Iowa.

THE UNITED STATES OF AMERICA
vs.
556 CADDIES OF TOBACCO ET AL.

To the honorable the circuit court of the United States for the district of Iowa:

William F. Sapp, attorney for the United States for the district of Iowa, comes, and in the name & behalf as well of the United States as of such person or persons as may be entitled to a moiety of the forfeitures hereinafter mentioned, and gives said court to understand and be informed that, on the 17th day of August, 1869, at Keokuk, in the county of Lee, in the first collection district, and in the district of Iowa aforesaid, and on William W. Belknap, United States collector of revenue in and for said first district, did seize the following property, to wit:

556 caddies tobacco, Star, av. w't	18	net	pounds.
12 caddies, tens	18		pounds.
144 caddies Honey Dew	17½		pounds.
64 short Honey Dew	11		pounds.
3 6 boxes Nectarine	37	net	pounds.
49 butts Nectarine	14	"	pounds.
47 boxes Navy, pounds	32	"	pounds.
59 boxes Navy, pounds	50	"	pounds.
148 caddies Navy, ½ pounds	21	"	pounds.
47 butts Flounders	31	"	pounds.
816 caddies Virginia Gem	20	"	pounds.
16 hhd. (broken) leaf	9,800	"	pounds.
3 boxes leaf	1,000	"	pounds.
1 bundle leaf	600	"	pounds.

2,500 pounds lump in drying room.
964 pounds lump in rolling room.

Loose piles of leaf	3,000	pounds.
6½ barrels, Injun, (extra C.,) 14c	1,300	pounds.
4½ cases liquorice	1,800	pounds.

4 coal stoves, drums & pipes.
5 small platform scales.
35 sets moulds.
35 retainers.
17 box presses.
One barrel lard oil.
2 hidraulic presses and pumps.
6 hidraulic box presses.
1 lot empty caddies.
2 pair trucks.
1 platform scale.
1 platform scale, (Fairbanks'.)

60 caddies Navy, av. w't	20	pounds.
57 caddies Navy, halves	20	pounds.
136 caddies Navy, thirds	20	pounds.
100 caddies Navy, fourths	20	pounds.
113 caddies Navy, fifths	21	pounds.
109 caddies Navy Gem	20	pounds.
44 caddies Navy Gem	20	pounds.
227 caddies Navy Star	18	pounds.
4 caddies Natural Leaf	15	pounds.
1 caddy Natural Leaf	12	pounds.
106 caddies Grape Juice	20	pounds.
240 caddies Honey Dew	18½	pounds.
60 butts Nectarine	15	pounds.
12 caddies Nectarine	17	pounds.
22 butts Nectarine	22	pounds.
1 butt Nectarine	30	pounds.
108 butts Flounders	31	pounds.
16 boxes Navy	50	pounds.
4 boxes Natural Leif	16	pounds.
13 butts Fine Pear	25	pounds.
8 caddies Bright Tens	19	pounds.

And now hath the same in his custody as being forfeited for the causes hereinafter mentioned:

First. For that, subsequent to the first day of January, 1868, to wit, from the first day of January, 1868, to the 17th day of August, 1869, to wit, at the county of Lee, in said district of Iowa, and in the first said collection district of the said State of Iowa, J. A. Henderson & Co. were the owners of a tobacco factory, tobacco vessels, tools, and implements, employed in the manufacture of tobacco, and articles of personal property, seized as aforesaid, had possession of and custody, and used the same in the maunfacture of tobacco, and did then and there
5 manufacture and prepare, and place in boxes, commonly called caddies, leaf tobacco so manufactured, and did sell and remove large quantities of said leaf tobacco, so manufactured & prepared, and placed in boxes or caddies, from this said factory without first placing, or causing to be placed, on said boxes or caddies of tobacco so manufactured and prepared, and so sold and removed, the proper revenue stamps denoting the tax thereon, and without having paid the special tax required by law; and did then and there place on said boxes or caddies of tobacco so manufactured and prepared, and so sold & removed, half stamps; that is to say, revenue stamps were cut in two

parts by said Henderson & Co., each part of said stamps so cut being used on separate caddies, and the half stamps so covered by a whole stamp as to make the half stamp so used on said boxes or caddies resemble and be taken for a whole stamp; that the tobacco, seized as aforesaid, is a part of the tobacco so manufactured as aforesaid, and the articles of personal property, as well as all other articles so
6 seized, including leaf tobacco in said factory, were owned and controlled and used by said J. N. Henderson & Co. in their said factory; all of which was done by the said Henderson & Co., by themselves, their agents, and employees, on divers days and times from the first day of January, 1868, to the 17th day of August, 1869, at their said factory in the city of Keokuk, county of Lee, in the first collection district, and in the district of Iowa, as hereinbefore stated.

Second. And for further cause of forfeiture your honor is here given to understand and be informed that heretofore, to wit, on divers days between the first day of January, 1868, and the 17th day of August, 1869, the said Henderson & Co., being the owners and proprietors of a tobacco factory as hereinbefore stated, which said factory was situated at the city Keokuk, county of Lee, in the district of Iowa aforesaid, at which said factory leaf tobacco was manufactured & prepared for market & merchandise, did prepare & put in boxes or caddies said leaf tobacco so manufactured at their said factory, and did sell said tobacco so prepared without first placing on said boxes or caddies of such to-
7 bacco the proper revenue stamp or stamps denoting the tax thereon, and did place on said boxes or caddies of tobacco so manufactured by them false & fraudulent stamps on the same denoting the tax thereon.

Third. And for further cause of forfeiture your honor is here given to understand and be informed that it became and was made the duty by law of the said Henderson and Co. to report, and be made known to the proper officers of the United States for that purpose, their annual sales of tobacco manufactured at their said factory, so situated as aforesaid, and it became & was their duty to make true & correct entries of the amount of tobacco so manufactured by them for each & every year; but, notwithstanding the premises, and notwithstanding their said duty in that behalf, the said Henderson & Co. made false & fraudulent entries of the amount of tobacco so manufactured by them annually, and made false & fraudulent entries of the amount of tobacco so sold by them annually, and made false & fraudulent reports to the proper United States officers of the amount of their annual sales of tobacco so manufactured by them at this said factory.

8 Wherefore, and by force of the statute in such case made & provided, the articles of property seized as aforesaid have become and are forfeited to the use in said statute mentioned.

And, therefore, said attorney of the United States, on behalf of the United States, says that all and singular the premises are true; wherefore he prays that process may issue against the property as aforesaid to enforce the forfeiture thereof, in accordance with the statute in such cases made and provided.

WILLIAM F. SAPP,
U. S. Dist. Att'y Iowa.

Filed September 27th, 1869.

GEORGE B. CORKHILL, *Clerk.*

9 And now on this day, to wit, October 19th, in the year of our

Lord one thousand eight hundred & sixty-nine, came the said defendants by their attorneys, and file their plea in bar in the said entitled cause; which said plea is in the words & figures following, to wit:

10 In the circuit court of the United States for the district of Iowa

THE UNITED STATES OF AMERICA
vs.
556 CADDIES OF TOBACCO ET AL. } Plea in bar.

And now comes J. N. Henderson & Co., a copartnership of that name & style, and show to the court that they are the owners of the said 556 caddies of tobacco and other property specified in the lible.

And they further show, as appears by the said lible, that the said property was seized on the 17th day of August, 1869, but that the proceedings to enforce the said forfeiture were not commenced, to wit, the said libel or information was not filed, until more than twenty days after said seizure.

Whereupon they show that the said libelant should not have or maintain the said proceedings, but that the same should be forthwith dismissed by the court, the said seizure vacated, and the said property be by order of this court restored to the said claimants.

11 And they further show that the said libellant should not have or maintain the said proceedings, for then the said proceedings to enforce the forfeiture of the property described in said libel was not commenced—that is to say, the said libel or information was not filed—within twenty days from the seizure thereof, as provided by law.

Wherefore they pray that the said libel may be forthwith by the court dismissed, the said seizure vacated, and the said property be by order of court restored to the said claimants.

GILLMORE & ANDERSON, &
McCRARY, MILLER & McCRARY,
Att'ys for Claimants.

Filed Oct. 19th, 1869.

GEORGE B. CORKHILL, *Clerk.*

12 And now on this day, to wit, October nineteenth, in the year of our Lord one thousand eight hundred & sixty-nine, came the United States by her attorney, W. F. Sapp, and files his demurrer in the said entitled cause; which said demurrer is in the words & figures following, to wit:

13 In the circuit court of the United States for the district of Iowa.

THE UNITED STATES OF AMERICA
vs.
556 CADDIES OF TOBACCO ET AL. & J. N. Henderson & Company.

Now comes the plaintiff by her attorney, W. F. Sapp, and demurs to the plea in bar of the said defendants heretofore filed in the above case, and for cause of such demurer states the following: Said plea is sufficient in law in alleging that the libel or information was not filed in said case until more than twenty days after said seizure, because she says that by the law of the land said libel or information was not re-

quired to be filed for more than twenty days after said seizure was made.

Wherefore she asks judgement that said plea be held for naught.

Filed Oct. 19th, 1869.

GEORGE B. CORKHILL, *Clerk.*

14 And now on this day, to wit, the 22d day of October, in the regular October term, A. D. 1869, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

THE UNITED STATES
vs.
556 CADDIES OF TOBACCO ET AL. & J. N. Henderson & Company, claimants.

This day came the above-named pl'ff by Hon. W. F. Sapp, United States district att'y, and the claimants, J. N. Henderson & Co., a firm composed of J. N. Henderson, Thomas Cash, John B. Strange, and George B. Smith, by Geo. W. McCrary & Robert H. Gillmore, attorneys for said claimants.

And the cause coming on to be heard on demurrer of pl'ff (libelant) to the plea in bar filed by said claimants, and the court, having duly considered the matter, overruled the said demurrer. And the said pl'ff standing upon the said demurrer, it is ordered & adjudged by the court that the said libel or information be dismissed. It is further
15 ordered & adjudged that the said property seized as in said information set forth & fully described and scheduled in said information be forthwith restored to said claimants.

And the marshal of this court is hereby ordered to deliver the same to said claimants. Whereupon the pl'ff, by her attorney, gave notice of an appeal to the Supreme Court of the United States, and applied for a superceadeus to issue, susspending and restraining the judgement & order herein until the same is adjudged by said Supreme Court.

16 And now on this day, to wit, the 2d day of November, in the regular October term, A. D. 1869, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

THE UNITED STATES
vs.
556 CADDIES OF TOBACCCO ET AL.

This cause coming on to be heard upon the motion of the district attorney of the United States for an order superseding the execution of the judgement of this court upon the demurrer to the libel in the above-entitled cause, pending the appeal taken therefrom by the United States, it being made to appear that the United States has perfected an appeal from said judgement to the Supreme Court of the United States, said motion is sustained, and it is ordered that said judgement be and stand superseded until the determination of said appeal.

17 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the district of Iowa, greeting:

Because in the record and proceedings as also in the rendition of a judgment in a plea, which is in said circuit court before you, between the United States, plaintiff, and 556 Caddies of Tobacco et al., & J. N. Henderson & Co., defendants, a manifest error hath happened to the great damage of the said plaintiff, as by his complaint appears, and we, being willing that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this 30th day of Oct., in the year of our Lord one thousand eight hundred & sixty-nine, and of the independence of the United States the ninety-fourth.

[SEAL.] GEORGE B. CORKHILL, *Clerk.*

18 In the circuit court of the United States, fourth district of Iowa.

UNITED STATES OF AMERICA
vs.
556 CADDIES OF TOBACCO ET AL. & J. N. HENDERSON & COMPANY.

To George B. Corkhill, esqr., clerk of the circuit court of the United States for the district of Iowa:

SIR: You will make out and transmit to the clerk of the Supreme Court of the United States, at Washington, D. C., a full, true, and complete transcript and record of all the pleadings filed, entered, & recorded, under your hand & seal of office, in the above case, that the same may be there revived on error. Also transmit the writ of error heretofore issued in this case.

Oct. 30th, 1869.

W. F. SAPP,
U. S. Dist. Att'y Iowa.

Filed Oct. 29, 1869.

GEORGE B. CORKHILL, *Clerk.*

19 DISTRICT OF IOWA, *ss:*

I, George B. Corkhill, clerk of the circuit court of the United States for said district of Iowa, do hereby certify the foregoing transcript from pages one to 19 inclusive to contain a full, true, and perfect copy from the record of [of] all the proceedings of said court in said cause, wherein the United States was plaintiff and 556 Caddies of Tobacco et al. & J. N. Henderson & Co., defendants, as the original of the same now remains in my custody; and I further certify that the writ of

error sued out by said United States, plaintiff in error in said cause, is annexed to said transcript.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office, in Des Moines, in said district, this twentieth day of November, A. D. 1869.

[SEAL.] GEORGE B. CORKHILL, *Clerk.*

(Indorsement on cover:) No. 328. The United States, plaintiff in error, vs. 356 Caddies of Tobacco, &c.—J. N. Henderson & Company, cl'm't. Iowa C. C. U. S.

Filed 6th December, 1869.

In the Supreme Court of the United States.

DECEMBER TERM, 1870.

THE UNITED STATES, *Plaintiff in Error*,
vs.
JOHN N. HENDERSON, *et. al.* } No. 129.

In Error to the Circuit Court of the United States for the District of Iowa.

BRIEF FOR THE UNITED STATES.

This is an information to enforce a forfeiture under the internal revenue laws, against three hundred and fifty-six caddies of tobacco, of which the defendants in error are claimants.

The tobacco was seized on the 17th of August, 1869. The information was filed the 27th of September, 1869. The claimants pleaded "that the proceedings to enforce the said forfeiture were not commenced, to wit, the said libel or information was not filed, until more than twenty days after such seizure." To this plea the district attorney demurred. The circuit court overruled the demurrer, gave judgment for the claimants, and this writ of error was brought.

By section 25 of the act of March 2, 1867, (14 Statutes at Large, 483,) penalties of fine, forfeiture,

and imprisonment were imposed upon owners, &c., of stills, for fraudulent omission to comply with the law concerning distilled spirits, and it was provided that the "said spirits, with the vessels containing the same, with all the vessels used in making the same, and all said materials, may be seized by the collector and held by him until a decision shall be had thereon according to law: *Provided*, That proceedings to enforce said forfeiture shall be commenced by such collector within twenty days after the seizure thereof." By section 9 of the same statute, (*ib.*, 474,) it was provided that "all proceedings relating to forfeiture and sale of distilled spirits shall apply to tobacco, snuff, and cigars."

If, therefore, the proviso limiting the time within which proceedings to enforce a forfeiture shall be commenced to twenty days is still in force, the judgment of the court below was correct.

But it is submitted that this proviso has been repealed.

By the act of July 20, 1868, sections 36 and 42, (15 Statutes at Large, 140–142,) new provisions were enacted in respect of the illegal manufacture of distilled spirits and the punishment thereof, covering entirely the ground of the preceding statutes, and no limitation is contained therein with regard to the time in which the proceeding of forfeiture shall be commenced. And in sections 69 and 70, of the same act, (*ib.*, 156,) under which this information was filed, there are new provisions, covering all the provisions of previous statutes in relation to the subject-matter, for the punishment of

persons manufacturing tobacco or snuff in violation of the internal revenue laws, and which make no reference whatever to the proceedings for the punishment of the illegal manufacture of distilled spirits.

It is clear, therefore, that these latest statutes were intended to prescribe the only rule which should govern the process of enforcing forfeitures for the offences included within their provisions, and that the former statute is, therefore, repealed.

Daviess *vs.* Fairbairn, 3 How., 636, 644.

Bartlet *vs.* King, 12 Mass., 536.

Commonwealth *vs.* Kelliher, 12 Allen, 480.

Sedgwick on Stat. & Const. Law., 126, 429.

Other statutes on this subject are the act of July 1, 1862, section 54, (12 Statutes at Large, 452;) the act of July 13, 1866, section 9, (14 Statutes at Large, 124;) and the act of March 3, 1868, section 5, (15 Statutes at Large. 58.)

A. T. AKERMAN,
Attorney General.

C. H. HILL,
Assistant Attorney General.

In the Supreme Court of the United States.

DECEMBER TERM, 1870.

THE UNITED STATES
vs.
JOHN H. HENDERSON, *et al.* } No. 29.

Additional Brief for the United States, filed by consent of the Defendants in Error.

The counsel for the United States desire to add one or two suggestions to the brief heretofore filed.

No provision was made for affixing revenue stamps to whiskey or tobacco until the act of July 20, 1868, § 67, 15 Stats. at Large, 155, but the revenue before and at that time was collected in an entirely different way. The offences for which this information was filed were first created by that statute, (see §§ 69, 70, p. 156,) and the information was founded upon that statute alone.

By § 105 of the act of 1868, (15 Stats. at Large, 166,) all acts and parts of acts inconsistent with it are repealed, but it is enacted "that the provisions of said acts shall be in force for levying and collecting all taxes properly assessed, or liable to be assessed, or accruing under the provisions of former acts, the right

to which has already accrued or which may hereafter accrue under said acts, and for maintaining, continuing, and enforcing liens, fines, penalties and forfeitures, incurred under and by virtue thereof. And this act shall not be construed to affect any act done, right accrued, or penalty incurred under former acts, but every such right is hereby saved; and all suits and prosecutions for acts already done in violation of any former act or acts of Congress relating to the subjects embraced in this act may be commenced or proceeded with in like manner as if this act had not been passed."

This section indicates the broad extent to which the former revenue acts had been revised by the act of 1868, so that Congress considered that penalties under them would be lost without such a saving clause.

The United States therefore contend that the act of 1868, being an entire revision of the act of 1866, and not merely amendatory thereof, the limitation relied upon by the defendants in error no longer exists.

A. T. AKERMAN,
Attorney General.

C. H. HILL,
Assistant Attorney General.

In The Supreme Court of the United States,

DECEMBER TERM 1870.

UNITED STATES, *Pl'ff. in error,*
vs.
JOHN N. HENDERSON, *et al.*

No. 129.

In Error to the Circuit Court of the United States for the District of Iowa.

BRIEF FOR DEFENDANTS IN ERROR.

The case is fairly stated by the learned counsel for the Government.

It is true that by the act of March 2, 1867, it was provided that "all proceedings relative to the forfeiture and sale of distilled spirits shall apply to tobacco, snuff, and segars," and that by the same act it was also provided that in prosecutions for fraudulent failure to comply with the law concerning distilled spirits "the proceedings to enforce such forfeiture shall be commenced * * * * *within twenty days after the seizure thereof.*" 14 Statutes at Large, page 483, Sec. 25, and 14 Statutes at Large, page 474, Sec. 9.

The learned counsel for the Government very properly and candidly admits that "if the proviso limiting the time within which proceedings to enforce a forfeiture shall be commenced to twenty days is still in force, the judgment of the court below was correct."

But it is claimed that this proviso has been repealed by the provisions of the act of July 20, 1868, 15 Statutes at Large, page 140.

The only question to be discussed is this one of repeal. We deny that the act of 1867 is repealed, *in toto*, by the act of 1868.

We insist that many of its provisions still remain in force, and among them the one affixing the limitation in question. If this limitation has been repealed it must be either by an express provision of some more recent act or by *necessary* implication. It is not claimed that it is by the former, and we have therefore only to inquire whether it is repealed by necessary implication.

The learned counsel for the Government is pleased to say that the Act of July 20, 1868, covers "*entirely the ground of the preceding statute*, and no limitation is contained therein with regard to the time in which the proceeding of forfeiture shall be commenced."

We respectfully submit that the statute of 1868 does not cover the entire ground of the preceding statutes. A careful comparison of the Act of 1868 with that of 1867 will show that much of the Act of 1867 remains in force.

There is nothing in the Act of 1868 regulating or defining in any way the manner of proceeding in cases of forfeiture. The provisions of the previous acts, including the limitation clause, must be regarded as still in force, or we must come to the conclusion that there is no statute now in force for this purpose.

If the Act of 1868 is to be construed as repealing the provisions of prior acts regulating the practice in seizure cases, we are left with no guide, and each court may adopt such form of proceeding as may be deemed most appropriate. If, however, the Act of 1868 is held only to repeal such prior enactments as are in necessary conflict with it, we shall find a plain provision in force declaring that the proceedings shall be "in the nature of proceedings *in rem* in the Circuit or District Court of the United States for the district where such seizure is made, or in any other court of competent jurisdiction." 13 Statute at Large, page 14.

Section 3 of the Act of 1867 (14 Statute at Large, 471) provides certain rules under which District Attorneys are to report certain things to the Commissioner of Internal Revenue. Section 4, of same act, places under the control of the Commissioner real estate acquired by the United States under the Revenue Laws. Section 7 authorizes the Commissioner to appoint detectives, &c., while section 8 provides a penalty for failure to pay tax when due. These are all important provisions of the Act of 1867. We believe no one claims that

they were repealed by the later Act; and yet if the proviso imposing the limitation in question is repealed, why not these sections also? We submit also, that it is not reasonable to suppose that it was the intention of Congress to repeal the limitation in question, and thus to leave the officer at liberty to hold property seized, for an indefinite time without commencing proceedings of forfeiture. The law is an exceedingly harsh and severe one at best. It authorizes a Collector, upon his own motion, and without the filing of an affidavit or the giving of any security whatever, to seize a manufacturing establishment, with all its machinery, implements, and material, though it may be of vast value, and to stop it at a heavy damage daily to to the owner. Can it be believed that Congress intended to repeal the only provision of the statute which required prompt proceedings to follow a seizure of this character? We think not. Certainly the Court will not so rule until the clause of the later act, which is in necessary and irreconcilable conflict with the limitation provision, is pointed out.

The cases cited in the brief of counsel for the Government are not only consistent with the views we have endeavored to set forth, but they give additional strength to our position.

Thus in Davies *vs.* Fairbairn, 3 Howard, 636, it is declared that "such parts of the prior statute as may be incorporated into the subsequent one as consistent with it must be considered in force. This is a settled rule of construction."

Now, we ask wherein is the limitation clause of the act of 1867 inconsistent with or repugnant to any of the provisions of the act of 1868? No conflict can be discovered by the closest scrutiny.

It is true that the case cited does hold that if the later statute "clearly intended to prescribe the only mode" of proceeding the earlier statute would be considered as repealed. But so far from the act of 1868 clearly prescribing the only mode of proceeding in seizure cases, it prescribed no mode of proceeding whatever, and thus left in full force all the provisions of the act of 1867, so far as they related to the kind and manner of proceeding.

So also in Bartlett *vs.* King, 12 Mass., 536, the same general doctrine was laid down, and the earlier statute was held to have been repealed by the later one, on the ground that it was "very obvious,

by comparing them, that the Legislature considered the latter as a complete substitute and repeal of the former."

And again, in Commonwealth *vs.* Kelliher, 12 Allen, 480, the later statute was held to repeal the earlier, on the ground that the two statutes covered precisely the same subject matter, and because *both could not stand*. The case is widely different from the one at bar.

We also rely with great confidence upon Sedgwick on Statute and Constitutional Law, cited by counsel for Government, pages 126 to 136. The doctrine laid down in this work is familiar to the Court and the profession.

Among other principles applicable to this case which are well stated and elaborated in this work, are the following:

A statute is to be held repealed by a subsequent enactment only when "the two statutes are so flatly repugnant that both cannot be executed and we are obliged to choose between them," (page 126.)

"Though it is clearly settled that statutes may be repealed by implication, and without any express words, still the leaning of the Courts is against the doctrine if it be possible to receive the two acts of legislation together," (pages 126–7.)

"Laws are presumed to be passed with deliberation, and with full knowledge of existing ones on the same subject; and it is, therefore, but reasonable to conclude that the Legislature, in passing a statute, did not intend to interfere with or abrogate any prior law relating to the same matter, *unless the repugnancy between the two is irreconcilable*," (page 127.)

These principles applied to this case will, we are confident, be found to be conclusive of it.

Respectfully submitted:

McCRARY, MILLER & McCRARY,
Counsel for Def'ts in Error.